

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

\_\_\_\_\_  
In the Matter of )  
 )  
 )

Implementation of Section 4(g) of the Cable )  
Television Consumer Protection Act of 1992 )  
8

MM Docket No. 93-

Home Shopping Station Issues )  
 )  
 )  
\_\_\_\_\_ )

**REPLY COMMENTS OF SHOP NBC**

William R. Richardson, Jr.  
Jack N. Goodman  
Aaron A. Hurowitz

Wilmer, Cutler, Pickering  
Hale & Dorr LLP  
1875 Pennsylvania Ave.  
Washington, D.C. 20006  
(202) 663-6000

Nathan E. Fagre

Senior Vice President and  
General Counsel  
Shop NBC  
6740 Shady Oak Lane  
Eden Prairie, MN 5534  
(952) 943-6117

August 2, 2007

## **TABLE OF CONTENTS**

Summary .....	ii
I. MOST COMMENTERS CONFIRM THAT RECONSIDERATION OF THE COMMISSION’S 1993 DECISION WOULD BE INCONSISTENT WITH THE INTENT OF CONGRESS AND UNWARRANTED. ....	- 1 -
II. THE FEW OPPOSING COMMENTS PROVIDE NO REAL FACTUAL SUPPORT FOR THEIR CLAIMS. ....	- 4 -
III. THE RISE OF E-COMMERCE PROVIDES NO BASIS FOR REVISITING THE 1993 REPORT AND ORDER. ....	- 12 -
IV. THE EFFORTS OF NCTA AND CABLEVISION TO RELITIGATE THEIR LOSS IN <i>TURNER</i> HAVE NO PLACE IN THIS PROCEEDING. ....	- 14 -
CONCLUSION.....	- 17 -
EXHIBIT A.....	- 19 -

## Summary

In its Supplemental Comments, Shop NBC demonstrated that Section 4(g) of the Cable Act of 1992 authorized only a unique snapshot determination, to be completed no later than July 1993, as to whether home shopping stations were serving the public interest. A large number of commenters support this interpretation while also overwhelmingly agreeing that a determination that stations do not serve the public interest because they broadcast predominantly home shopping programs would be inconsistent both with limits applied by the First Amendment and with the recognized value of truthful commercial speech. The comments recently filed in this proceeding further demonstrate that, not only is there no evidence warranting revising the Commission's prior determinations that home shopping stations serve the public interest, but there are other previously unrecognized public interest benefits provided by home shopping stations.

By contrast, the comments filed in support of the Center for the Study of Commercialism's ("CSC") petition for reconsideration provide no real factual support for their claims and fail to give the Commission reason to disturb its holdings in the 1993 Report and Order in this proceeding. There is no validity in the arguments that the rise of Internet-based sales eliminates the public interest benefits provided by home shopping stations. The significant growth since 1993 in revenue for and the number of sales made annually by home shopping networks demonstrates that the Internet has failed to undermine the popularity and need for home shopping programming.

Finally, NCTA and Cablevision's comments raise arguments that the Commission should not consider. First, their arguments are not within the scope of CSC's petition for reconsideration and could have been but were not raised by them in 1993 and therefore should not be considered for that reason alone. Second, they urge a line of inquiry that is not permitted by Section 4(g) of the Cable Act, which does not allow the Commission to deny must carry status to stations serving the public interest. Third, and finally, the constitutional analysis advocated by NCTA and Cablevision would put the Commission on a slippery slope towards making case-by-case carriage decisions in a manner not foreseen by Congress. In sum, NCTA and Cablevision are inappropriately using this proceeding to relitigate their losses in the *Turner* decisions.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

	)	
In the Matter of	)	
	)	
Implementation of Section 4(g) of the Cable	)	
Television Consumer Protection Act of 1992	)	MM Docket No. 93-8
	)	
Home Shopping Station Issues	)	
	)	
	)	

**REPLY COMMENTS OF SHOP NBC**

ValueVision Media, Inc., d/b/a Shop NBC ("Shop NBC"), respectfully submits this reply to the comments filed in this proceeding on July 18, 2007.

**I. MOST COMMENTERS CONFIRM THAT RECONSIDERATION OF THE COMMISSION'S 1993 DECISION WOULD BE INCONSISTENT WITH THE INTENT OF CONGRESS AND UNWARRANTED.**

In its Supplemental Comments, Shop NBC demonstrated that Section 4(g) of the Cable Act of 1992 authorized only a unique snapshot determination, to be completed no later than July 1993, as to whether home shopping stations were serving the public interest (and thus entitled to the must carry rights granted to all other stations under that Act). Other commenters confirm that interpretation.<sup>1/</sup> As NAB also argues, it would be unreasonable for the Commission in any event to

---

<sup>1/</sup> Cocola/ION/Jovon Comments at 16-19; Home Shopping Network ("HSN") Comments at 7-9; Electronic Retailing Ass'n Comments at 7-8.

reconsider now, after fourteen years, its affirmative answer to that question, upon which broadcasters have relied in making significant business decisions.<sup>2/</sup> In addition to Shop NBC, these broadcasters have included the only public television station in the Pittsburgh market, and the largest Asian American-owned television group in the United States.<sup>3/</sup> Commenters also overwhelmingly agree that a determination that stations do not serve the public interest because they broadcast predominantly home shopping programs would be inconsistent both with the First Amendment's strict limits on government regulation of speech based on its content and with the recognized value of truthful commercial speech.<sup>4/</sup> As Trinity points out, any other view "will set the stage for further sorties into constitutionally impermissible content regulation of expression," based on "government programming evaluations of worth."<sup>5/</sup>

The comments also demonstrate that there is no evidence that warrants revising the Commission's determinations in its prior decision in this docket fourteen years ago. Both broadcasters and their viewers – including those whose individual comments have been attached by WQED and HSN – have again

---

<sup>2/</sup> NAB Comments at 3.

<sup>3/</sup> WQED Multimedia Comments at 11; Multicultural Comments at 1-2.

<sup>4/</sup> Cocola/ION/Jovon Comments at 19-22; HSN Comments at 11-14; NAB Comments at 9-10; Multicultural Television Broadcasting, LLC Comments at 5-6; Reading Broadcasting, Inc. Comments at 5-6; Trinity Christian Center of Santa Ana, Inc. Comments at 4-14; Electronic Retailing Assn Comments at 5-6.

<sup>5/</sup> Trinity Comments at 2, 4.

confirmed the continuing entertainment value and consumer benefits of television home shopping, both by those with special needs and by the general population, and notwithstanding what is now available for purchase over the Internet.<sup>6/</sup> One WQEX viewer's observation is typical, but has special force in light of the growing concerns about the need for better education of consumers on the digital transition: "I learned about HD TV from watching the guy sell them on Shop NBC."<sup>7/</sup> Attached hereto are further testimonials from Shop NBC viewers about the attractiveness of its programming and the consumer benefits provided by that programming.<sup>8/</sup>

The commenters also identify other public interest benefits associated with television home shopping programming. As WQED Multimedia points out, the revenues from the shopping programming it carries on WQEX enable it to pay the growing costs required for programming on its sister stations WQED, Pittsburgh's only public broadcast television station, and WQED-FM, which is able to continue its classical music format.<sup>9/</sup> The home shopping format also continues to enable minority-owned broadcasters such as Multicultural Television to enter the

---

<sup>6/</sup> HSN Comments at 19-22 & exs. A-C; Multicultural Television Broadcasting, LLC Comments at 7; Reading Broadcasting, Inc. Comments at 7; NAB Comments at 5; WQED Multimedia Comments at 3-6 & ex. A.

<sup>7/</sup> WQED Multimedia Comments at 5.

<sup>8/</sup> *See* Exhibit A. Shop NBC obtained these viewer comments by means of a BizRate Research survey that appears after a customer has completed purchasing an item. This survey prompts customers to provide general comments if they so desire. The name and email address for each customer have been omitted.

<sup>9/</sup> WQED Multimedia Comments at 5-6.



television marketplace, notwithstanding the otherwise daunting financial barriers to such entry.<sup>10/</sup> The same is true, as Reading Broadcasting points out, for struggling broadcasters that have experimented unsuccessfully with other formats. They have been able to rely on television home shopping as a reliable source of income that permits them to continue to provide diverse sources of news and informational programming to their viewing audiences.<sup>11/</sup> Similar facts supported the Commission's public interest determination in 1993, and continue to support that conclusion today. All of these comments confirm the continuing validity of the Commission's prior findings that television home shopping programming serves the public interest. They stand in stark contrast to the unsupported assertions of other commenters.

## **II. THE FEW OPPOSING COMMENTS PROVIDE NO REAL FACTUAL SUPPORT FOR THEIR CLAIMS.**

This unusual proceeding, about whether to revisit the Commission's decision of fourteen years ago, was precipitated by a petition for reconsideration filed in August 1993 by the Center for the Study of Commercialism ("CSC"). Today, however, CSC is nowhere to be found. Either it no longer exists, or it no longer has any interest in this proceeding. Arguably, CSC's demise or disinterest requires termination of this proceeding, since the only party who timely sought reconsideration has abandoned its advocacy. To the extent that other parties now

---

<sup>10/</sup> Multicultural Television Broadcasting, LLC Comments at 9-10.

<sup>11/</sup> Reading Broadcasting Comments at 10.

ask the Commission to change its decision, they either did not exist or chose not to seek reconsideration in 1993. The Commission's delay in deciding CSC's petition should not be the basis for other parties to reopen this long-settled proceeding. Certainly, the fact that the petitioner has no further interest in this proceeding only serves to confirm that there is no basis for disregarding the time limits Congress imposed in Section 4(g) on the Commission's determination in this proceeding, and the general requirement that – even if the Commission has inherent authority to reconsider decisions – it must do so in a reasonable time period.

However, even if the Commission has the authority to revisit today the balancing of the statutory and other factors it reached in 1993, nothing in the comments warrants upsetting that judgment.

**Viewing of Home Shopping Stations.** While some commenters suggest that television home shopping programming may no longer be attracting significant viewing, they provide no support for this assertion. In fact, the record demonstrates quite the opposite. Even measured by numbers of stations, the Children's Media Policy Coalition ("CMPC") identifies 112 full power stations that it says devote at least half their time to home shopping or paid programming.<sup>12/</sup> NCTA alleges that there are "[d]ozens" of such stations today.<sup>13/</sup> The Campaign Legal Center *et al.* ("CLC") count 87.<sup>14/</sup> HSN reports that it continues to supply home shopping

---

<sup>12/</sup> Children's Media Policy Coalition ("CMPC") Comments at 3.

<sup>13/</sup> Nat'l Cable & Telecommunications Ass'n ("NCTA") Comments at 4.

<sup>14/</sup> Campaign Legal Center *et al.* ("CLC") Comments at 10 n.7.

programming for a majority of the broadcast day to 74 LPTV stations serving 60 different markets.<sup>15/</sup> More important, however, the significant revenues associated with television home shopping demonstrate – quite apart from its entertainment value – the importance that viewers continue to attach to it notwithstanding the rise of e-commerce since 1993. Shop NBC, for example, has experienced a seven-fold increase in its revenues in the past ten years alone.<sup>16/</sup> QVC and HSN have also continued to record revenues from home shopping that demonstrate no loss of significant viewer support.<sup>17/</sup> HSN reports it has over 5 million active customers.<sup>18/</sup>

Just as in 1993, this “continued success and expansion would not likely occur without significant viewer support.”<sup>19/</sup> If there were any doubt about the matter, the testimonials from viewers of Shop NBC’s affiliate WQEX – in which Cablevision appears to place great stock<sup>20/</sup> – clearly would eliminate it. To these may now be added similar expressions of support by other Shop NBC viewers across the country,

---

<sup>15/</sup> HSN Comments at 1.

<sup>16/</sup> Shop NBC Supplemental Comments at 1, 17 n.58.

<sup>17/</sup> Although QVC, HSN, and Shop NBC are available in many markets as cable networks rather than over broadcast stations, there is no reason to believe that their viewer support over broadcast stations is or would be any less enthusiastic than their viewer support over cable networks.

<sup>18/</sup> [http://www.sptimes.com/2006/09/25/Business/HSN\\_pitch\\_\\_must\\_shop\\_.shtml](http://www.sptimes.com/2006/09/25/Business/HSN_pitch__must_shop_.shtml)

<sup>19/</sup> Report and Order, *Implementation of Section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992: Home Shopping Station Issues*, 8 FCC Rcd 5321 ¶ 6 (1993) (“1993 Report and Order”).

<sup>20/</sup> Cablevision Comments at 14 n.58.

attached to these reply comments. These views confirm the wisdom of the Commission's consistent judgment that the marketplace – and not the unsupported assertions of commenters about what viewers do or do not want to see, or about a “hierarchy” of what they *should* be seeing<sup>21/</sup> – should govern radio and television formats and format changes.

**Competing Demands for the Spectrum.** The spectrum reallocation proposed by CLC and Free Press reflects a fundamental misunderstanding about Section 4(g). As many commenters note, that provision does not contemplate expropriation of spectrum from home shopping stations if they are deemed not to serve the public interest; it permits them to change to another format. Thus, the preference for “new entrants” or nonbroadcast uses of the spectrum CLC and Free Press advocate is misdirected, as is Free Press's suggestion of “free community use of the other digital sub-channels.”<sup>22/</sup> NCTA's complaint about the need for greater channel capacity internal to cable systems<sup>23/</sup> is yet another red herring. Putting aside the point that Congress did not intend in Section 4(g) to make any comparison

---

<sup>21/</sup> CLC Comments at 2, 10-11, 14-15; Cablevision Comments 7-9. CLC's argument about a “hierarchy” of First Amendment values also makes the wrong comparison, which is not to news and informational programming (of the kind that all television broadcasters are required to air) but to *American Idol* or *Desperate Housewives*. There is no basis on which the Commission could determine that these entertainment programs better “assis[t] in the creation of a well-informed electorate,” or in “the widest possible dissemination of information,” than the consumer information provided over home shopping programs, even putting aside the First Amendment barriers to any such inquiry.

<sup>22/</sup> CLC Comments at 11; Free Press Comments at 6.

<sup>23/</sup> NCTA Comments at 3.

to nonbroadcast use of television station spectrum, bandwidth within the cable pipe has nothing to do with that spectrum. Congress' considered judgment about the appropriate balance between the requirement to carry local broadcast signals and cable's bandwidth needs is reflected in Section 614(b)(1) of the Act, 47 U.S.C. § 534(b)(1), and the Commission has no discretion to revisit that judgment when enforcing the Act.

In any event, the many other spectrum initiatives over the past fourteen years, by Congress and the Commission, hardly support the argument for nonbroadcast use of television spectrum. As other commenters have pointed out, the DTV transition and other such initiatives have actually freed up more broadcast and other spectrum for wireless, public safety, and broadband use that was unavailable in 1993 (*e.g.*, UHF channels 52-69). These spectrum initiatives, which occurred after the Commission's decision in 1993 that Congress had not intended in Section 4(g) to reallocate spectrum to nonbroadcast uses and which pointedly did not include any Congressional efforts to change that decision, also demonstrate that Congress did not disagree with the Commission's 1993 judgment that nonbroadcast uses should not be considered in determining whether shopping stations serve the public interest. Nor do the auction bids cited by CLC demonstrate higher and better broadcast uses for television home shopping channels.<sup>24/</sup> Those bids reflect reliance on the very flexibility in format approved by the Commission here, vary

---

<sup>24/</sup> CLC Comments at 12-13.

based upon the size of the relevant market(s), and all are significantly lower than Shop NBC's 2003 payment of \$32.5 million for WWDP.

In 1993, the Commission relied in part on the absence of comparative renewal challengers as confirmation of its views about the value of home shopping programming. As CSC noted at the time,<sup>25/</sup> this factor alone may not have been all that persuasive, given the renewal expectancy then provided to incumbents. CLC now relies heavily on the 1996 Act's subsequent abolition of comparative renewal applications to argue that alternative (i.e., nonbroadcast) demands for home shopping stations' spectrum should be considered,<sup>26/</sup> but as NAB points out that amendment also demonstrates that Congress has since determined not to permit the Commission to compare uses by existing stations to those proposed by others.<sup>27/</sup> CLC, while relying on this amendment to the Act, asks the Commission to undertake the kind of comparison that Congress rejected.

As noted above, the real test of the value of home shopping programming comes from the discipline of the marketplace, which has permitted Shop NBC and other licensees to adopt home shopping formats when they are attractive to viewers, and to change them when they are not. The Commission has broad discretion to

---

<sup>25/</sup> See 1993 *Report and Order* ¶ 11.

<sup>26/</sup> 47 U.S.C. § 309(k).

<sup>27/</sup> NAB Comments at 12 n.32.

rely on that market discipline, as the Supreme Court held it did in the analogous context of radio formats.<sup>28/</sup>

**Competition with Nonbroadcast Home Shopping Services.** CLC argues that large cable MSOs no longer own HSN and QVC.<sup>29/</sup> This argument ignores the Commission's equally substantial concern, shared by Congress and the Supreme Court,<sup>30/</sup> about cable operators' "direct financial stake" in the revenues of nonbroadcast home shopping networks.<sup>31/</sup> As Shop NBC has noted, that stake provides a significant disincentive to its carriage as a cable network, which must carry has helped it to overcome in certain markets. Cablevision's suggestion that home shopping stations do not add to diversity on cable systems is not only irrelevant to this competition concern cited by Congress in Section 4(g), but it is also wrong. Home shopping stations increase viewpoint diversity, because they are not selected by the cable operator. They increase diversity of public affairs and children's programming, which cable networks are not required to provide. And they increase intraformat diversity by enhancing the kinds and brands of products for which consumers receive valuable price and other information. In this respect,

---

<sup>28/</sup> Shop NBC Supplemental Comments at 13-14.

<sup>29/</sup> CLC Comments at 7-8, 13.

<sup>30/</sup> 1992 Cable Act §2(a)(14)-(15); *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 646 (1994) (*Turner I*).

<sup>31/</sup> 1993 *Report and Order* ¶¶ 16 & nn.46-47.

they are no different than what cable operators seek to provide with multiple movie, sorts, news, and entertainment channels.<sup>32/</sup>

**Children's Programming.** CMPC argues that some home shopping stations are not meeting the processing guidelines for children's educational and informational programming imposed by the Commission three years after its 1993 decision in this proceeding. But nothing in CMPC's survey indicates any failure of any home shopping station owner, much less the entire home shopping broadcasting industry, to meet its public interest obligations.<sup>33/</sup> According to CMPC's survey, the licensees identified therein all report that they meet but (in most cases) do not exceed the three hour "core" programming guideline for staff processing established by the Commission. In this regard, like most other licensees, they are simply employing the safe harbor provided to them by the Commission. While CMPC may find that guideline (or the failure of program guides to publish information about

---

<sup>32/</sup> Contrary to Cablevision's suggestion, Shop NBC does not broadcast its programs over owned or affiliated stations where it is already carried as a cable channel.

<sup>33/</sup> There are two errors in CMPC's chart with respect to Shop NBC. First, NBC Universal owns only a minority interest in Shop NBC. Second, as noted in the survey attached to HSN's comments, WJFB(TV), Nashville, TN, which once carried Shop NBC programming, is now a Jewelry TV affiliate.



children's programming provided to them) inadequate, this hardly demonstrates that any television licensee is failing to meet its public interest obligations.<sup>34/</sup>

Similarly, CMPC notes that the Commission has issued admonishments to one owner of home shopping stations (ION) based on its disclosure in its renewal applications that its notices to program guides of such children's programs omitted the age range of its educational and informational programs.<sup>35/</sup> Here again, with respect to home shopping as well as other stations, the Commission has made clear that such an admonishment does not amount to any failure to serve the public interest. Its grant of renewal applications notwithstanding such disclosures, like its grant of renewals to other stations in CMPC's survey, is incompatible with such a finding.<sup>36/</sup>

### **III. THE RISE OF E-COMMERCE PROVIDES NO BASIS FOR REVISITING THE 1993 REPORT AND ORDER.**

---

<sup>34/</sup> Nor does CMPC's quarrel as to whether three of the many children's programs identified in its comments, which it apparently concedes qualify as educational, are directed primarily to children as opposed to families, whether another (*Animal Rescue*) is educational, tell the Commission anything about whether home shopping stations in general are serving the public interest.

<sup>35/</sup> CMPC Comments at 7. CMPC also cites one additional admonishment to KBCB(TV), Bellingham, WA, for three 30-second commercial overages seven years ago, and a failure to file records of the stations' compliance with the commercial limits for children's programs eight years ago. *See World Television of Washington, LLC*, DA 07-2773 (rel. June 25, 2007).

<sup>36/</sup> Of the 41 stations identified as receiving admonishments in CMPC's Appendix 2, all 41 have been granted license renewals notwithstanding the admonishment.

Cablevision cites predictions that the Internet may account for 10% of all “retail” sales this year.<sup>37/</sup> Cablevision, CLC, and Free Press argue that in light of the growth of web-based sales, there is no longer any public interest in providing consumers with shopping opportunities over television stations.<sup>38/</sup>

As noted above, at least since its deregulation of radio formats,<sup>39/</sup> the Commission has determined to reject the idea of answering such questions by government fiat rather than by marketplace demand. But in many cases, Internet sales are originated by the more detailed host presentations as viewed on television.<sup>40/</sup> In many other cases, the unavailability or unaffordability of broadband access precludes or reduces the convenience of web-based shopping.<sup>41/</sup> Most importantly, the significant growth in revenues by television home shopping

---

<sup>37/</sup> Cablevision Comments at 8. In fact, the source cited by Cablevision states only that “10 percent of all *clothing* sales are expected to occur online” (emphasis added).

<sup>38/</sup> Cablevision Comments at 8-9; CLC Comments at 14-15; Free Press Comments at 4.

<sup>39/</sup> See Memorandum Opinion and Order, *Changes in the Entertainment Formats of Broadcast Stations*, 60 F.C.C.2d 858 (1976), *rev’d sub nom WNCN Listeners Guild v. FCC*, 610 F.2d 838 (D.C. Cir. 1979) (en banc), *rev’d*, 450 U.S. 582 (1981).

<sup>40/</sup> An overwhelming majority of Shop NBC’s Internet sales are generated from customers who are also viewers of Shop NBC’s television programming but use the Internet either to: (1) more conveniently place an order for an item they have seen on television and/or (2) search for additional items.

<sup>41/</sup> See High-Speed Services for Internet Access: Status as of June 30, 2006, Industry Analysis and Technology Division, Wireline Competition Bureau (January 2007).

networks since 1993, notwithstanding the advent of the Internet, makes Cablevision's argument implausible. So do the comments of viewers attached to the comments of HSN, WQED Multimedia, and now Shop NBC. As Cocola/ION/Jovon note, "Viewership makes or breaks commercial broadcast stations" regardless of format.<sup>42/</sup> And despite the Internet, broadcasters continue to employ home shopping formats because they continue to enjoy significant viewer support.

#### **IV. THE EFFORTS OF NCTA AND CABLEVISION TO RELITIGATE THEIR LOSS IN *TURNER* HAVE NO PLACE IN THIS PROCEEDING.**

Finally, NCTA and Cablevision ask the Commission to answer a different question than the one Congress asked: not whether home shopping stations serve the public interest, but instead whether they, and they alone, should be denied must carry rights. They contend that mandatory carriage of home shopping stations raises particular constitutional issues that the Commission should now address. The Commission cannot consider these arguments.

First, NCTA actively participated in the Commission's proceedings in 1993, and Cablevision could have done so if it wished. Neither NCTA nor Cablevision timely asked the Commission to reconsider its decision that shopping stations serve the public interest and, therefore, qualify for mandatory carriage; and the cable claims are not encompassed within the scope of the CSC petition. Were the Commission to consider their arguments now, it would effectively allow them to seek untimely reconsideration. Indeed, the Commission cannot consider their

---

<sup>42/</sup> Cocola/ION/Jovon Comments at 9.

arguments to withdraw shopping stations' must carry rights. In *Sprint Corp. v. FCC*, 315 F.3d 369 (D.C. Cir. 2003), the Court reversed a Commission decision on reconsideration changing a rule on grounds not noticed. It rejected the Commission's argument that the mere pendency of a petition for reconsideration on one ground gave it authority to completely reverse its decision on others.<sup>43/</sup>

Second, there is no statutory authority for the Commission to consider whether shopping stations should not have must carry rights. The question posed in Section 4(g) was whether shopping stations serve the public interest. If they were, "the Commission *shall* qualify such stations as local commercial television stations for purposes of" the must carry rules.<sup>44/</sup> If not, those stations were to be permitted a "reasonable period" in which to adopt other formats, in which case they would certainly have been eligible for mandatory carriage. The statute simply does not permit the inquiry NCTA and Cablevision urge upon the Commission.

Third, NCTA and Cablevision ask the Commission to undertake a constitutional analysis of stations' carriage rights based on their particular programming. Nothing in their arguments would limit this analysis to stations airing shopping programs, and the Commission's consideration of these contentions would open the Commission to repeated arguments that any particular station's

---

<sup>43/</sup> 315 F.3d at 375. Notably, the D.C. Circuit further held that public notice of a petition for reconsideration issued on delegated authority is not adequate public notice that a different rule might be adopted, since the authority delegated to the Commission staff to issue public notices does not extend to issuing rulemaking proposals. *Id.* at 376.

<sup>44/</sup> 47 U.S.C. § 614(g)(4)(emphasis added).

programming does not sufficiently advance the governmental interests supporting must carry to allow carriage rules to be applied to it. Such an approach, of course, would eviscerate the must carry *rule* and replace it with case-by-case carriage decisions. Congress clearly chose a different path.

Moreover, the cable arguments fly in the face of one of the Supreme Court's central holdings in *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622 (1994) (*Turner I*): “the must-carry rules, on their face, impose burdens and confer benefits without reference to the content of speech.”<sup>45/</sup> The Court emphasized, “the privileges conferred by the must-carry provisions are also unrelated to content. The rules benefit all full-power broadcasters who request carriage.”<sup>46/</sup>

In *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180 (1997) (*Turner II*), the cable petitioners raised arguments similar to those NCTA and Cablevision make now – that carriage of only some stations would suffice to achieve Congress' goals. The Court turned those arguments aside, recognizing that “broadcast stations denied carriage will either deteriorate to a substantial degree or fail altogether.”<sup>47/</sup> Further, “[i]t is for Congress to decide how much local broadcast television should be preserved.”<sup>48/</sup> The Court looked at the governmental interests supporting must

---

<sup>45/</sup> *Turner I*, 512 U.S. at 643.

<sup>46/</sup> *Id.* at 645; *see also id.* at 647 (“The rules, as mentioned, confer must-carry rights on all full power broadcasters, irrespective of the content of their programming.”).

<sup>47/</sup> *Turner II*, 520 U.S. at 192 (*quoting Turner I*, 512 U.S. at 666).

<sup>48/</sup> *Turner II*, 520 U.S. at 193.

carry based on the overall system of local broadcasting, not on how they applied to any particular station.<sup>49/</sup> The *Turner* decisions are, therefore, based on a conclusion that all stations are entitled to carriage rights. While the Commission was authorized to make a decision about whether shopping stations were serving the public interest in 1993, once that decision was made and their carriage rights confirmed, the statute also provides no authority for the Commission to make the station-by-station carriage decision that NCTA and Cablevision advocate.<sup>50/</sup>

### CONCLUSION

For the reasons stated above and in Shop NBC's prior comments, the CSC petition

should be dismissed, and this proceeding should be terminated.

Respectfully submitted,

SHOP NBC

---

<sup>49/</sup> Indeed, since program formats vary over time, the approach sought by NCTA and Cablevision would mean that stations' carriage rights could come and go, a result totally at odds with Congress' intent to establish secure carriage rules.

<sup>50/</sup> Most of the specific cable arguments are shopworn retreads of their arguments against must carry generally, and have been well refuted by broadcasters. For example, while Cablevision asserts that mandatory carriage of shopping stations is an unconstitutional taking, broadcasters have shown that mandatory carriage rights do not result in a taking. *See, e.g.,* A Constitutional Analysis of the "Primary Video" Carriage Obligation: A Response to Professor Tribe, *submitted with* Letter from Jack N. Goodman to Ms. Marlene H. Dortch, CS Docket 98-120 (August 5, 2002) at 16-27. Further, NCTA was a party to the *Turner* litigation, and Comcast was a member of NCTA at that time, and therefore bound by its litigation positions. Having litigated the issue of the constitutionality of must carry, including the opportunity to raise arguments about the application of the carriage rules to shopping stations, the constitutionality of the must carry rules for shopping stations should be deemed to be *res judicata* against them.

By: /s/ William R. Richardson, Jr.

William R. Richardson, Jr.

Jack N. Goodman

Aaron A. Hurowitz

Wilmer Cutler Pickering Hale

and

Dorr LLP

1875 Pennsylvania Ave., NW

Washington, DC 20006

(202) 663-6000

Nathan E. Fagre

Senior Vice President and

General Counsel

Shop NCB

6740 Shady Oak Lane

Eden Prairie, MN 55344

(952) 943-6117

August 2, 2007

Its Attorneys

# EXHIBIT A



## Email Comments Received by Shop NBC

Sent: Thu 5/11/2006 1:14 AM

Comment: I just love watching shopnbc especially when the macoy's are on they are such a lovely couple and that charla well she just makes your day alot brighter cause she always makes you laugh. You see I'm disabled and can't afford much and my life seems to have gone in a downward spiral so to watch your show and have your host put a smile on my face truely means alot. Please keep up the good work

-----

Sent: Wed 8/30/2006 6:17 PM

Comment: My husband and I both watch every night. I got him hooked to the point that sometimes he watches alone!! Our favorite hosts are Wes and Pam. I have Pam's faux furs, shearlings and leather jackets. I think she's is such a great designer and if I could afford it I'd buy much more. We love Margie also. We have 6 of her lamps, two of her side tables and I just ordered some trunks. I have also purchased many Invicta watches and other jewelry and Isomers. ShopNBC has made it possible for me to get items I never would be able to own otherwise. My husband is disabled. He had a heart transplant 12 years ago and now he must go to dialysis three times a week. Watching ShopNBC is something we can do together dispite his disabilities. Even though our income has changed because he no longer can work our home is warm and cozy because of Margie and I look great because of Pam!!!

-----

Sent: Mon 7/23/2007 11:05 PM

Comment: I have been shopping at shopnbc for a while for watches. Tell Jim I'm on a limited budget due to being an amputee, recent kidney transplant patient. But I love to look good at a limited price. Thank you and Jim helping me to do that with the selections and prices.

----

Sent: Sun 7/22/2007 5:54 PM

Comment: It is so nice to be able to shop for top quality product without having to travel. I live in a rural part of the country and find it time consuming and expensive to try to shop for a variety of product. I find more variety on your site than I could, if I traveled to several stores.

-----

Sent: Sat 7/21/2007 2:27 PM

Comment: Very convenient for a busy single guy like me. It's the ultimate "Shopping made easy".

-----

Sent: Tue 7/3/2007 3:24 PM

Comment: That guy in the brown suit should be fired! I want to buy everything he talks about!! I much prefer shopNBC over HSN or QVC as it is more interesting and informative about the products. I love that I can shop at home w/o going to big dept. stores where help is negligible. I feel i can get all my questions answered before I buy. I like that.

-----

Sent: Mon 7/2/2007 12:55 AM

Comment: I started watching Jim Skelton's watch shows about 18 months ago. The level of knowledge, transfer of enthusiasm, and ability to educate that Jim brings to the table is outstanding!! Thanks and keep it up! My only complaint (if you would even call it that) is the sleep I am losing due to the airing hours of some of the shows!! Surprisingly, I think I'll live!

-----

Sent: Sun 6/17/2007 11:43 PM

Comment: I really enjoy you program I can set in mu easy chair and make buys without spending a dime for gas and fighting the crowds.

-----

Sent: Sun 5/13/2007 8:41 AM

Comment: I discovered Shop Nbc after I escaped a violent marriage with nothing but my cat and my purse, I want to thank you all because with your beautiful and tasteful things I have built my new husband and myself a beautiful invitig loving home to come home to. This is largely due to Margie's lamps and rugs to the beautiful jewelry wardrobe I am building - Thank you.

----

Sent: Sun 5/13/2007 1:11 AM

Comment: The host was a very good salesman. I had lost everything in Hurricane Katrina and am currently rebuilding my home (ever so slowly) but was so compelled to purchase for my new home because of the gentleman's ability so sell with details that no one else could provide. My purchase is being delivered to a friend's home and its going to paitently wait for my home to be completed.

----

Sent: Sat 4/28/2007 12:15 PM

Comment: ShopNBC has ended me having to go out in traffic, crowded malls and makes my shopping an enjoyable experience. The host are the best and know the product which they are selling. Their show is always on my tv and instead of watching commercials I use the remote and which them instead and sometimes I order. Thank you SHOP NBC you are the best.

----

Sent: Wed 4/18/2007 5:07 PM

Comment: Jim Skelton does a great job educating the new watch collector like myself and is entertaining to watch (no pun intended :) - my compliments to him and ShopNBC.

----

Sent: Fri 3/23/2007 4:45 PM

Comment: The quality of the products look exceptional. All the hosts are extremely nice and honest - not phoney. The hosts are very knowledgeable.

----

Sent: Mon 3/19/2007 3:05 PM

Comment: I AM A WATCH COLLECTOR, SHOPNBC DOES OFFER A NICE SELECTION OF WRIST WATCHES! YOU CANNOT FIND THE GREAT PRICES ON TIME PIECES IN OUR LOCAL MALLS PERIOD AS ON YOUR WEB SITE.

YOUR MAN JIM SKELTON IS THE POWER HOUSE ON YOUR WATCHES SALES.VERY INFORMATIVE ON THE FEATURES OF A TIME PIECE! HOPE TO SEE MORE OF YOUR WATCH OFFERINGS IN THE FUTURE.

----

Sent: Thu 3/8/2007 2:12 AM

Comment: I had not purchased a watch for myself in about 20 years. After catching the watch shows with Jim Skelton on shopnbc, I really appreciated the amount of product information and education that Jim Skelton brings to the show, he do not just sell but educate. This is what made me feel very good about making the purchase from shopnbc. I have to add, that I have not seen the type of quality of items that I have purchsed from shopnbc at the prices that I paid, in the retail store in my area.

----

Sent: Tue 3/6/2007 4:59 AM

Comment: I love your show, I have a hard time sleeping duw to a back injury and your show keps me company. I love all of your hosts. They all convey a very positive attitude.

Thank you for your show.

----

Sent: Wed 2/28/2007 10:49 AM

Comment: It is great that you offer value pay since some people may not be able to buy without it. I like to use it for higher priced items. I also like the fact tht I can look on my computer and see on the tv how the jewlery looks without going to many different stores. I usually only order jewlery but I have also purchased hadbags also. I like the hosts also because they are just like a friend sharing a purchase with you. I am sure they need to "sell" also but the way that they present the items you don't feel any pressure to buy. The items seem to sell themselves. There is something for everyone.

----

Sent: Mon 2/19/2007 4:41 PM

Comment: I love ShopNbc. The host are very informative. They deliver all information thoroughly with a touch of humor. Your merchandise is topnotch and I love Jim Peterson. I have learned so much about electronics since I started watching him for approx past five years. Keep up the good work.

----

Sent: Tue 7/3/2007 7:04 PM

Comment: Enjoy watching shows and have purchased to much!! I have found that the host are not giving the information on color and clarity as often as they should. Remember alot of folks to not have computers to check these things out and I order on that Info. I think that has been and important part of your shows.

----

Sent: Tue 6/26/2007 8:13 AM

Comment: i recommend shopnbc. why? person answering phone: excelent, best customer service. host excellent (all of them, charla, i like her a lot. she makes me laugh) quality of items excelent. that is why you are my #1.

----

Sent: Thu 6/21/2007 2:17 PM

Comment: I love your jewelry shows, the show hosts are very nologable and entertaining and make shopping fun and painless. I like it that I don not see my jewelry on everyone else's hand.

----

Sent: Thu 6/14/2007 4:29 PM

Comment: I love ShopNBC !! It's very refreshing to find high-end shopping with with exceptional pricing. ShopNBC's hosts are so professional, guests are interesting, and customer service is very good(thank you for still having people!). I enjoy watching Bill and Sarah in the morning

and Charla any time I can, she is Soooo fun!

----

Sent: Thu 5/31/2007 3:54 PM

Comment: I have never found better values anywhere in watches. Keep up the good work and Jim Skelton is great.

----

Sent: Sun 5/27/2007 4:42 AM

Comment: Excellent at home shopping channel. Great hosts, especially Jim Skelton. Although only my second watch puchase on ShopNBC, I do try and watch

Mr. Skelton every Sunday @ 4:00 pm eastern. I credit him for my sudden intrest in watches, I only have four now, but plan on buying more. ShopNBC can expect more business from me in the near future. Keep up the good work!

----

Sent: Mon 5/21/2007 4:40 PM

Comment: Wonderful sight, I watch for entertainment as much as for purchase....especially enjoy Jim Skelton and Sean with the watch shows.

----

Sent: Fri 5/18/2007 10:54 PM

Comment: I can honestly say that I truly enjoy Jim Skelton's watch shows above all other programming, I've come to look forward to staying up late in order to catch them. He makes the shows enjoyable and feel he is truly passionate about what he does and is quite entertaining. Jim's enthusiasm has turned me on to Invicta watches and pretty effortlessly seperates me from my money....with a smile on my face nonetheless in anticipation of my new favorite watch!!

----

Sent: Sat 3/31/2007 10:35 PM

Comment: My husband is addicted to ShopNBC--the watch programs in particular--so I checked it out with him. I shopped for his birthday present on this site today. From my own experience, I have to say I can see clearly why he's addicted the hosts are lively, they don't just drone on and on and you can't help but feel enthused with the products that they offer. You believe in their judgment of the product before you even possess it. When you actually get the product...well, you see that you weren't mislead! Great programs, great site, great shopping experience all around.

----

Sent: 2007

Comment: Wonderful shopping for the busy person at work and home. And, for those with disabilities to ambulatory shopping. Thanks Shopnbc for your quality, value payments and attention to detail for the consumer, like me. Thank for the opportunity to have purchased most of my entire jewelry collection in an affordable manner and look great!!!. And next, one day be able to leave my two grandchildren

my jewelry collection to remember a "grandmother". (now that is truly a blessing)  
Again, thanks.

----

Sent: 2007

Comment: Must have been fate. Puppies got me up early. Flipping through channels and they was the perfect treadmill that I HAVE to use for health issues...yes all because of obesity. That incidious enemy that grows on you slowly till one day 20 years and 80 lbs have got behind me. This gives me motivation to get up and move in the privacy of my home. Thanks!

----

Sent: 2007

Comment: Shop NBC saved my sanity when I was confined to bed for 6 months and was able to interact with my tv set and receive a "gift" every few days.